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September 22, 2017

MATSCHER FARMS INC. STATEMENT OF POSITION

VIA EMAIL DATCPSitingBoard@wisconsin.gov

Cheryl Furstace Daniels, Board Attorney
LFSRB Authorized Representative
2811 Agriculture Drive
Madison, WI 53708

Re: Bonneville, et al., v. Shawano County
Docket No. 17-LFSRB-01

Dear Attorney Furstace Daniels:

I represent Matsche Farms, Inc., by Scott Matsche, and hereby provide you with my client's Statement of Position regarding the above appeal before the Livestock Facility Siting Review Board (LFSRB).

First, the record of Shawano County's July 13, 2017 public hearing should be amended to reflect that Attorney Kurt Sutheimer (who filed the appeal) has since retracted some highly false, fraudulent and defamatory statements that he made about Matsche Farms, Inc. at the hearing. I have transcribed to the best of my ability, the pertinent portions of his oral statements.

Attorney Sutheimer stated: "What I've heard OK is that what actually happened in May was that a neighbor had a video camera, and she took videos of Matsche Farm personnel dumping manure into the river." He also appeared to state that the video was "with the DNR," so it could be made available to the County. I confirmed with DNR that that statement was false because the DNR has no such video. I attach Attorney Sutheimer's written retraction of his false and defamatory statements.

The first issue raised by the appeal is whether the Town of Almon and Shawano County gave proper notice to residents. The Town is a separate legal entity from the County, and is not a party to this appeal. Since the Town is not a party to the appeal, no issues raised about the Town should be considered on this appeal.

In addition, I do not believe that the Town of Almon has adopted siting through zoning. I do not believe there is anything in s. 93.90 Wis. Stats. or ATCP 51 that requires a hearing on the application at the town level, let alone a specific type of notice by the Town. So, the appeal seems to complain about a hearing or notices that were not required. The appeal provides no specific details about what was allegedly wrong with any notices or proceedings by the Town. And again, although there is nothing to consider because nothing is specifically alleged, the Town is not a party here, has not been asked for a record, and issues complaining about the Town should not be considered by the LFSRB. The Town gave all proper notices in the normal course of business and Attorney Sutheimer and others were at the town meeting regarding my client's proposed expansion.

Regarding notice by the County, all proper notices were given and residents who wanted to appear and provide information at the hearing were at the hearing, including Attorney Sutheimer. Since Attorney Sutheimer represents the aggrieved persons, he was arguably at the hearing for all of them. In fact, I believe that Mr. Sutheimer was at all of the public proceedings regarding Matsche Farms' siting application. There are simply no grounds conceivable to support the lack of notice argument. Legally, everyone had proper notice and an opportunity to be heard. Those people who did not attend the hearing waived their opportunity to be heard.

The appeal also appears to claim that someone was required to notify the public of allegations of DNR violations against Matsche Farms, Inc. from May, 2017, but no legal authority for that proposition has been provided. Those are DNR matters and my understanding is that they have been resolved. The approval was explicitly conditioned on complying with DNR permitting requirements, and that is presumably often if not always the case.

Next, the appeal refers to allegations of DNR violations made in May, 2017. The DNR is the public body which resolves such allegations, and if someone wants to complain to or about the DNR's handling of the allegations, legal procedures are available to do that. DNR is not a party to this appeal. Arguments based on mere past allegations of DNR violations are insufficient to be the basis of this appeal, when the DNR has apparently resolved the allegations outside the scope of ATCP 51. That makes the allegations irrelevant to this appeal. The County committee considered them to be irrelevant. To my knowledge, Matsche Farms received no DNR fines or forfeitures as a result of the cited past allegations, and at the time of the hearing and presently, there were or are no DNR violations to my knowledge. Again, the approval is conditioned on DNR approvals.

The appeal complains that conditions on the approval are "a plan for a plan." Are not all livestock siting applications a plan for a plan? One has to start somewhere. It is routine for county approvals to have conditions on approvals. How can all conditions be met before an

applicant knows whether or not the application will be approved? How can a siting plan be carried out without first being approved? Compliance will always be continually self-monitored by the farm and the application and hearing are the first part of the process. The County may monitor compliance under ATCP 51.34(4)(a). Planning to plan is a natural part of the ongoing siting compliance process from application through conducting the future operations.

Regarding the third issue on whether certain documents are part of the record, that issue should be addressed specifically by the County. However, the County Land Conservation Committee appeared to find that Attorney Sutheimer's emphasis on past DNR allegations to be irrelevant. The Committee reviewed an exhaustive and professionally prepared application and went through a comprehensive checklist and concluded that the application met all of required standards for approval. Whether Mr. Sutheimer's irrelevant documents made it into the record has no bearing here because he talked about them at the hearing and he sites them in his brief. Clearly, the Committee saw through the false and defamatory statements and pretty much ignored them as irrelevant and/or completely unreliable. Nothing provided at the hearing contained clear and convincing information to warrant denial of the application.

The present appeal does not even attempt to claim that any of the standards under ATCP 51 for structures, odor and air emissions, nutrient management, water storage facilities, and/or runoff management were not adequately addressed in the application. The appeal seems to ask the LFSRB to require the County to consider other state standards involving past DNR allegations, but that would expand the standards required to be met in ATCP 51, and that may be prohibited by ATCP 51.10(3) ("A political subdivision may not apply local standards that are more stringent than the standards under this subchapter . . .").

The forms of relief requested in the appeal are, quite frankly, not available. The appellants want a completed application process to be postponed? They want "the public" to "conduct field inspections"? That would be trespassing and illegal. They want Scott Matsche's "neighbors to help him verify . . . compliance"? His neighbors have no specialized knowledge to verify any type of compliance. That was the role of Matsche's engineering, architecture, environmental and construction services firm, GHD¹, and the role of the government, which

¹ "GHD is one of the world's leading professional services companies operating in the global markets of water, energy and resources, environment, property and buildings, and transportation. We provide engineering, architecture, environmental and construction services to private and public sector clients." See www.ghd.com

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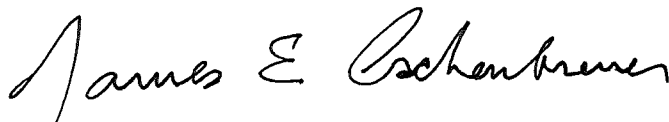
represents the public. Both the government and GHD have done their jobs in a professional manner.

Finally, since the relief requested does not include a request to deny the application, the appeal should be denied and the County's approval sustained. We also request that the LFSRB not consider any grounds for affecting the approval that have not been specifically raised in the appeal.

Thank you for your hard work and dedication to this process.

Sincerely,

Greenhill Aschenbrener Law LLC

A handwritten signature in black ink that reads "James E. Aschenbrener". The signature is written in a cursive, flowing style.

By: James E. Aschenbrener, Member

c/ Matsche Farms, Inc.

RETRACTION OF STATEMENTS

MADE AT SHAWANO LAND CONSERVATION COMMITTEE

JULY 13, 2017

I would like to retract certain statements I made at the Shawano Land Conservation Committee Public Hearing on July 13, 2017 during a period where the public was allowed to discuss the application issue.

According to the legal representative for Matsche Farms, Inc., the pertinent portion of my statements have been transcribed from a personal video recorder and are as follows:

"My understanding, and again at this point I'm not under oath, and I have to present you with some hearsay evidence. What I've heard, OK, is that what actually happened in May (2017) was that a neighbor had a video camera, and she took videos of Matsche Farm personnel dumping manure into the river. And that's what started, that's what created the DNR (inaudible). Anyway, so the information may not be correct, but again this information may be important to the Board's decision... Video evidence may be of interest. If it's available. It's with the DNR so it could also be made available to you."

My wording "dumping manure into the river" was not true.

What I meant to say was that what I had heard was that someone may have had made a video of a tanker that was spreading manure onto a field during a period of rain.

The statement "dumping manure into the river" was certainly not made with any malicious intent to lie or defame the character of **Matsche Farms, Inc. personnel**.

The error in my wording was the unfortunate result of failing to accurately recall what was said by another taxpayer in the area. Please note that the Department of Natural Resources Notice of Violation Document of May 25, 2017 did identify

discharge into the Embarrass River on two May 2017 dates and provides significant detail.

My wording "It's with the DNR so it could be made available to you." is also not true.

What I meant to say was that the DNR may have a copy of the video if the video was indeed available based on the hearsay that there was a video that had been made.

The words "It's with the DNR so it could be made available to you" that were made after the words "If it's available." were certainly not made with any malicious intent to lie or defame the character of **Matsche Farms, Inc. personnel.**

The error in my wording was the unfortunate result of failing to accurately add to those words the words "If it's available" since without that condition, the words by themselves seem to suggest that I knew that the video was available at the DNR.

My intent in presenting information to the county level Board was to make them aware of what other people may have said so that they could decide whether to wait for additional information to decide on the application approval. My wording "Anyway, so the information may not be correct" and "If it's available." are two examples where I was trying to warn the county level Board that what I was recalling from others may not be correct.

I completely retract the false or misleading wording identified here and apologize for any mistakes.

Sincerely

A handwritten signature in black ink, appearing to read "Kurt Sutheimer", written in a cursive style.

Kurt Sutheimer